

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

KARISSA L. DUNN

(b) County of Residence of First Listed Plaintiff

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. Section 1692

Brief description of cause:

Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S)

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

5/17/10

DATE

SIGNATURE OF ATTORNEY/OF RECORD

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 333 1/2 King Street, Lancaster, OH 43130
 Address of Defendant: 507 Prudential Road, Horsham, PA 19044-2308
 Place of Accident, Incident or Transaction: 333 1/2 King Street, Lancaster, OH 43130
 (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases 15 U.S.C. § 1692
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Ther Kimmel, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 5/17/10

Craig Ther Kimmel
Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 5/17/10

Craig Ther Kimmel
Attorney-at-Law

57100

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Karissa L. Dunn

CIVIL ACTION

v.

NCO Financial Systems, Inc.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

5/17/10
Date

Craig Thor Kimmel
Attorney-at-law

Karissa L. Dunn
Attorney for

(215) 540-8888

Telephone

800-863-1689

FAX Number

Kimmel@creditlaw.com

E-Mail Address

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

KARISSA L. DUNN	:	
Plaintiff,	:	JURY TRIAL DEMANDED
	:	
v	:	No.
	:	
NCO FINANCIAL SYSTEMS, INC.	:	
Defendant.	:	

COMPLAINT

NOW COMES the Plaintiff, KARISSA L. DUNN, by and through her attorneys,
KIMMEL & SILVERMAN, PC, for her complaint against the Defendant, NCO FINANCIAL
SYSTEMS, INC., Plaintiff states as follows:

I. JURISDICTION & VENUE

1. This is an action for damages brought by an individual consumer for Defendant's
violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter
"FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive, and unfair
practices.

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
that such actions may be brought and heard before "any appropriate United States District Court
without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original
jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business within the State of Pennsylvania and therefore,
personal jurisdiction is established.

1 4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1).

2 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

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5 **II. PARTIES**

6 6. KARISSA L. DUNN, (hereinafter, "Plaintiff") is an individual who was
7 at all relevant times a resident of Lancaster, Ohio.

8 7. NCO FINANCIAL SYSTEMS, INC., (hereinafter, "defendant") is a business
9 entity engaged in the collection of debts with a business address located at 507 Prudential Road,
10 Horsham, PA 19044-2308.

11
12 8. At all relevant times, Plaintiff is a "consumer" as that term is defined by 15 U.S.C.
13 §1692a(3).

14 9. At all relevant times, Defendant acted as a "debt collector" as that term is defined
15 by 15 U.S.C. §1692a(6), in that it held itself out to be a company collecting a consumer debt
16 allegedly owed by Plaintiff to Defendant.

17
18 **III. PRELIMINARY STATEMENT**

19
20 10. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute
21 which prohibits a catalog of activities in connection with the collection of debts by third parties.
22 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that
23 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,
24 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
25 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and

1 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
2 unconscionable conduct, both generally and in a specific list of disapproved practices.
3

4 11. In particular, the FDCPA broadly enumerates several practices considered
5 contrary to its stated purpose, and forbids debt collectors from taking such action. The
6 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
7 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
8 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
9 collector may not use any false, deceptive, or misleading representation or means in connection
10 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
11 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
12 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
13 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
14 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
15 connection with the collection of a debt.
16

17
18 12. In enacting the FDCPA, the United States Congress found that “[t]here is
19 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
20 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
21 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
22 additionally found existing laws and procedures for redressing debt collection injuries to be
23 inadequate to protect consumers. 15 U.S.C. § 1692b.
24
25

1
2 13. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
3 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
4 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
5 collection practices are not competitively disadvantaged, and to promote consistent State action
6 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

7
8 **IV. ALLEGATIONS**

9 14. At all pertinent times hereto, Defendant was hired to collect a debt allegedly
10 owed to a third party.

11 15. The alleged debt at issue arose out of transactions that were primarily for personal,
12 family or household, purposes.

13 16. Beginning on or around February 13, 2010, Defendant, its agents, employees,
14 etc., engaged in debt collection activities seeking payment from Plaintiff.

15
16 17. Defendant, its agents and employees harassed the Plaintiff by making continuous
17 calls to her cell phone number from (513)602-4319, as late as 9:00pm.

18
19 18. Defendant, its agents and employees called Plaintiff anywhere between two (2)
20 calls per day and sometimes as many as ten (10) calls per week.

21 19. Plaintiff told Defendant to stop contacting her; however, Defendant ignored
22 Plaintiff's instructions and continued to contact her.

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24 20. Plaintiff never contracted with any company named “NCO FINANCIAL
25 SYSTEMS, INC.” or agreed to any obligation to a “NCO FINANCIAL SYSTEMS, INC.”.

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21. Defendant continues to attempt to collect the alleged debt.

V. CONSTRUCTION OF APPLICABLE LAW

22. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

23. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C § 1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

24. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3d Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced

1 does not change its character, nor take away its power to deceive others less experienced.” Id.

2 The least sophisticated consumer standard serves a dual purpose in that it ensures protection of
3 all consumers, even naive and trusting, against deceptive collection practices, and protects

4 collectors against liability for bizarre or idiosyncratic interpretations of collection notices.

5 Clomon, 988 F. 2d at 1318.

6 7 8 **COUNT I**

9 *(Violation of the Federal Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq.)*

10 25. In its attempts to collect the debt allegedly owed by Plaintiff, Defendant violated
11 the FDCPA, 15 U.S.C. §1692 in one or more of the following ways:

- 12 a. Defendant violated FDCPA §1692c(a)(1), when it contacted the Plaintiff at an
13 unusual time or place or a time and place known or should be known to be
14 inconvenient to the Plaintiff in connection with the collection of a debt;
- 15 b. Defendant violated FDCPA §1692d, when it engaged in conduct the natural
16 consequence of which is to harass, oppress, or abuse any person in connection
17 with the collection of a debt;
- 18 c. Defendant violated the FDCPA §1692d(5), when it caused the Plaintiff’s
19 telephone to ring repeatedly or continuously with the intent to harass, annoy
20 or abuse Plaintiff;
- 21 d. Defendant violated the FDCPA §1692e, when it used false, misleading and
22 deceptive means in connection with the collection of an alleged debt;
- 23 e. Defendant violated the FDCPA §1692f, through its agents and employees,
24 by using unfair and deceptive means to collect a debt; and
- 25 f. Was otherwise deceptive and failed to comply with the provisions of the
FDCPA.

VI. JURY DEMAND

1 26. Plaintiff hereby demands a trial by jury on all issues so triable.

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4 **VII. PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, KARISSA L. DUNN, by and through her attorneys,
6 respectfully pray for judgment as follows:

- 7 a. All actual compensatory damages suffered;
- 8 b. Statutory damages of \$1,000.00 for each violation;
- 9 c. Plaintiff's attorneys' fees and costs; and
- 10 d. Any other relief deemed appropriate by this Honorable Court.

11
12 Respectfully submitted,

13
14 Date: May 17, 2010

15 By: /s/ Craig Thor Kimmel
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20 Ambler, PA 19002
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